IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4786 of 1992

PHOOLA RAM CHOUHAN
V/S
MARWAR GRAMIN BANK,PALI & ORS

Mr. RN UPADHYAY, for the appellant / petitioner

Mr. MD PUROHIT assisted by Mr. RAKESH KALLA, for the respondent

Date of Order : 16.5.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This petition has been filed by the petitioner, seeking to challenge the orders Annexure-8 and Annexure-11, being dt. 19.2.1991 and 23.4.1992 respectively, whereby the punishment of removal from service was imposed, after holding departmental enquiry, and was affirmed in appeal.

The facts of the case, as pleaded by the petitioner in the writ petition are, that while working at Sirohi Branch, an explanation was called from the petitioner regarding wrong payment of Rs. 700/- from S.B. Account of one Shri Naina Ram, which was replied on 22.4.1985. Thereafter a charge sheet dt. 19.11.1985, along with memorandum of charges was served upon him, being Annexure-1. Before issuance of the charge sheet, an F.I.R.

had already been filed on 18.9.1985, inter alia for the offences under Sections 408, 468, 411 and 201 I.P.C., and the case had been registered on filing challan in the Court of Munsif Magistrate.

The petitioner then requested the Bank on 22.1.1986, not to proceed with the departmental enquiry on the same charges. This request was turned down on 11.6.1986, and the petitioner was asked to submit reply, which was accordingly filed on 6.7.1986, denying all the charges. Then, Enquiry Officer was appointed. Then on 17.11.1986, the petitioner again requested, that since police had challenged the case on the same charges, which is subjudice, the enquiry may be stayed, but that request was also not acceded to. Thereafter, in the enquiry three witnesses were examined, being Shri D.C. Sharma, Shri P.D. Vaishnav, and Shri R.K. Suthar. However, Shri Naina Ram was not examined. The copies of the statements of three witnesses have been produced as Annexures 2, 3, and 4 respectively. It is then alleged, that the petitioner demanded copy of the duty list of Cashier/Clerks, so also of Token Book on 3.8.1989, which was not supplied. Then, the petitioner demanded for perusal of the original documents on 3.8.1989, but these documents were also not got perused by him, and on 30.8.1989 only photo stat copies

of specimen signature form, ledger sheet, withdrawal form, and preliminary report were shown, but copies were not supplied. Likewise, enclosures referred to in the preliminary report were neither got perused, nor supplied. This objection was got noted on 30.8.1989 in the proceeding. It is then alleged, that these were subsequently shown in the Court, but copies were not supplied. It is then alleged, that the petitioner was required to adduce evidence on 26.5.1990, but since his wife was on advance family way, he informed the Enquiry Officer on 25.5.1990, and applied for leave on 26.5.1990, and on reaching home he found the wife in a precarious condition, and confined to bed, and therefore, he requested for further extension, enclosing the medical certificates of wife's serious illness. It is alleged that the Enquiry Officer presumably accepted this request, and fixed the date of hearing on 7.6.1990, at Joyala Branch, and the Defence Counsel was said to have been asked to advise the petitioner, but then, the Defence Counsel did not inform the petitioner, and thus the petitioner remained under bonafide belief, that he will receive information about the date of hearing, and thus the petitioner could not attend the hearing on 7.6.1990. The allegation of the petitioner, then is, that in view of state of pregnancy of the wife, the petitioner sought leave, which was duly sanctioned for

7.6.1990, and that was extended upto 10.6.1990. The petitioner's wife delivered child on 6.6.1990 at his village. However, it is alleged that the petitioner had to proceed to Sheoganj to procure medicine, and it was, when he was at the bus stand of the Sheoganj, that he found the Enquiry Officer and the Presenting Officer, and he came to know from them, that they are proceeding to Joila Branch, for the purpose of holding the enquiry. However, the petitioner informed the fact that his wife has delivered a child on previous evening, and therefore, he was on leave, and has come to Sheoganj only to procure medicines, and he is not in a position to attend the enquiry, nor in a position to produce any witness on that date. It is also alleged, that while the petitioner was at Sheoganj, he came to know of a function of farewell party of Shri C.L. Suthar, which was incidentally attended by him. However, absence on 7.6.1990 in the enquiry is contended to be on account of want of knowledge of the date, it being not possible for him to produce witnesses, and his being on leave on 7.6.1990, which was extended to 10.6.1990, which leave was duly sanctioned. Enquiry is thus said to have proceeded exparte, and Enquiry Officer submitted the enquiry report after more than three months i.e. on 20.9.1990. A stand has been taken, that on the one hand the Enquiry Officer thought, that the petitioner is delaying

the enquiry, and therefore, proceeded exparte while, on the other hand, he took more than three months in submitting the report. Then, vide letter dt. 24.1.1991, a show cause notice was issued to the petitioner, enclosing therewith enquiry report, to which a detailed reply was submitted on 4.2.1991. Copy of the notice, enquiry report and the petitioner's reply has been produced as Annexures 5, 6 and 7 respectively. It appears, that thereafter, Annexure-8 has been passed, dismissing the petitioner from service. An appeal being Annexure-9 was filed against that order, which was dismissed vide Board's order dt. 24.3.1992. The copy of the appellate order has been produced as Annexure-11.

Then, the petitioner has sought to plead the precise charges, and the things required to be proved, for proving the charges, and has tried to contend, that the petitioner was no-where responsible for dereliction of duty, as the duty, was that of the Branch Manager, who failed to discharge his duty, and the petitioner has been held guilty by relying upon the statement of that very Branch Manager. The petitioner requested for being supplied the copy of the charge sheet, given to the Branch Manager, and the decision given thereon, but vide letter dt. 9.6.1992, he was informed, that the petitioner cannot be made available the copies of the papers relating to the

matters of other staff members. With these averments, the writ petition has been filed. The main grounds given in the writ petition are; firstly about justification for his absence on 7.6.1990, error on the part of the Enquiry Officer in proceeding exparte, and thus a ground of violation of principles of natural justice has been taken. The other ground given is that the petitioner demanded certain documents to defend his case on 3.8.1989, but these were not made available to him. Then, on 30.8.1989 only photo stat copies of some documents were shown but copies were not supplied, copy of the preliminary report was not supplied, and photo stat copy shown was not with the enclosures shown to be enclosed therewith. This objection was got noted on 30.8.1990, these were shown only in the Court but copies were not supplied. Likewise the petitioner was not supplied the copy of the duty list of clerk/cashier as also the Token Book, and thus also violation of the principles of natural justice is contended. It is also contended, that when no original documents were shown, and only photo stat copies were shown, it was observed by the Enquiry Officer himself, that the copies are not legible, and thus the enquiry could not proceed, still on 30.8.1989 Enquiry Officer remarked the copies to be legible, and thus, the petitioner was deprived of the proper opportunity to defend himself. Then, certain grounds have been taken

regarding merits of the findings on the charges. The other ground given is, that the enquiry proceedings were unfair, inasmuch as, it was the Branch Manager Mr. D.C. Sharma who failed to discharge his obligation but that aspect has altogether been neglected, and instead, the officer required to be punished, was pitted against the petitioner, by being produced as prosecution witness, and that Enquiry Officer, as also the Presenting Officer, were both junior to the said Branch Manager, and mainly relying upon his evidence, the petitioner has been found guilty. Thus, that witness cannot be said to be independent witness, his evidence cannot be said to be admissible, capable of being relied upon, and acted upon. The other ground raised is, that when on the same charges the criminal case was pending, the petitioner's request for staying the proceedings was wrongly declined. Then, reliability of statements of Sarva Shri P.D. Vaishnav and R.K. Suthar has been assailed. Then, usual grounds have also been taken about the dismissal order being non-speaking.

Reply to this petition has been filed by the Bank, inter alia contending, that the charges in the departmental enquiry and criminal case were different, apart from the fact, that both the proceedings can go on together, and therefore, request to stay the departmental proceedings was

untenable, the fields of two proceedings are entirely different, and thus there cannot be any hitch or legal obstacle in continuing both the proceedings simultaneously. Regarding filing reply to the charge sheet, it was denied that the reply was filed on 6.7.1986, rather it was received by the Bank on 12.11.1986 only. Regarding non production of Naina Ram, detailed facts were given about his being summoned, one of the letters having been received by him, and then subsequent letters having been refused to be received, or about the addressee being out of station/having left without address. It is pleaded, that it appears, that the petitioner some how pressed, persuaded, and used illegal means, to keep this witness out of the departmental enquiry, using muscle power. This conduct of the petitioner has also been highlighted, to contend, that Article 226 jurisdiction should not be invoked to help person with such conduct. At the time of filing of reply the criminal case was said to be pending. It was pleaded that the petitioner was given full opportunity to cross-examine the witness, which was duly availed by him. Regarding documents, it was pleaded, that the original documents were filed in the Criminal Court, and as such the petitioner was allowed to peruse these documents, he was shown these documents, and allowed to inspect them in the Court itself, and that he was shown the withdrawal form.

Thus, as the petitioner had inspected all relevant documents, no grievance can be raised on that count by the petitioner. Regarding the enquiry, proceeding exparte, it was pleaded, that the petitioner deliberately absented, when the enquiry was in active progress, as the petitioner was attending the enquiry on every date, and was cross-examining the witnesses. However, on 26.5.1990 when the petitioner was asked to appear on 28.5.1990, and since he was not present on that day, it was adjourned to 7.6.1990, and was fixed at the place of working of the petitioner, being Joila Branch. It was contended, that there is nothing to show, that the Defence Counsel did not intimate of the date, and thus the plea is a false one, and raised to camouflage. Then, it is also contended, that on 7.6.1990 the Enquiry Officer saw the petitioner at Bus Stand, Sheoganj, informed him personally, and the petitioner did come to the Branch Office, but the petitioner did not come before the Enquiry Officer, and when he was asked to join the enquiry proceedings, which were going on, the petitioner told, that he had come to the Branch only to join the farewell ceremony of Shri Suthar, who was transferred from Joyala to some other Branch, and that, he will participate in the enquiry only if his Defence Representative attends, and there is very likelihood of his not attending the enquiry. It was also pleaded, that

surprisingly the petitioner visited the Bank premises where the enquiry was going on, and on being asked to come and join the enquiry, he refused to join the same, on the pretext of his having come only to join farewell. With this conduct, it cannot be said, that he was not given opportunity to participate in the enquiry, so also, does not entitle him to invoke Article 226 jurisdiction. Regarding wife's ailment, it is pleaded, that when the petitioner did come to the Branch to attend the farewell, it does not stand to reason, that he was prevented from joining the enquiry, apart from the fact, that no medical certificate about ailment of wife has been produced. Thus, it is contended, that the petitioner was given adequate opportunity to defend, which was not availed by him, rather time and again he used to request to change his counsel. In all four Defence Counsels were given to him, and it appears, that all this was resorted to by the petitioner to protract the proceedings, and to beguile the trial, rather the petitioner made all efforts to see that the enquiry is not finished. It is alleged that it is the petitioner who did not allow Naina Ram to be produced in the enquiry, being a local person, and he has every means to tamper with the evidence, and all other evidence produced, does prove the case beyond any manner of doubt. Some sequence of dates was given to show, that the petitioner was given adequate

opportunity to defend. It was denied that on 7.6.1990 he incidentally attended the farewell. Regarding leave, it was pleaded, that if the incumbent applies for leave while the proceedings are going on, that does not furnish good ground to absent from the enquiry. It was then pleaded, that the petitioner was fully aware of the proceedings being fixed on 7.6.1990. He consciously neglected to appear on that date. It was then pleaded that so far the time taken by the Enquiry Officer in submitting report is concerned, it was pleaded in reply to para B/12, at internal page 14 of the reply, that the Enquiry Officer had to go through the entire record, and was to give finding. The presenting officer submitted the gist of his stand, which was supplied to the petitioner, and the petitioner was expected to submit his counter gist, but then, surprisingly no such counter gist was submitted by the petitioner, and the blame, about lapse of three months, is leveled against the Enquiry Officer, which cannot be accepted. Various other pleadings were taken. However, on facts, it was also pleaded, that the account holder Naina was not a literate person, and the account was opened on his photograph, and he had put thumb mark on the forms, when the account was opened. The document of withdrawal, which purported to bear thumb mark of Naina Ram, thereon, the thumb impression was verified by the petitioner, which on examination by the

handwriting expert, did not tally with the thumb impression available on the form of opening the account. Thus, it was contended, that the thumb mark was verified by the petitioner with intent to defraud the Bank in an amount of Rs. 700/-. Regarding circular, it was pleaded, that in the present case the petitioner has not denied to have verified the thumb impression of Naina Ram, rather he has appended initials on the verification, and therefore, if Naina Ram is prevented from coming in the witness box, the petitioner cannot escape from the liability. Then, submitting reply to the grounds, it was contended, that the contention about the circumstances, in which the proceedings were held on 7.6.1990, as pleaded by the petitioner are completely bereft of truth, rather once the enquiry was adjourned, to contend that he absented on the ground, that the petitioner was proceeding on leave, was nothing but an eye wash, the petitioner was present in the bank premises, was requested to participate in the proceedings, but he, point blank refused, on the ground that he has come to attend the farewell, and not the enquiry proceedings, with such conduct, he cannot invoke Article 226 jurisdiction. It was pleaded, that in order to facilitate the petitioner the enquiry was kept at his door step. It was also pleaded, that the petitioner was in habit of remaining on leave as and when there was date of enquiry, and thus was avoiding

and trying to prolong the enquiry unnecessarily, notwithstanding this, the petitioner had been given ample opportunity to defend, to inspect the documents, the original documents were shown in the Court, where the documents had been produced in the criminal case, and thus the petitioner was given full opportunity, in the direction of complying with the principles of natural justice. The conduct of the petitioner, as an employee of the bank, was highlighted to support the order of punishment. On merits, it was also contended, that the charges have been duly proved, and have rightly been found to be proved, and that the order has rightly been upheld in appeal.

A rejoinder has also been filed by the petitioner, reiterating that Naina Ram was not produced in the enquiry, and it does not behoove to the respondents to take a plea like, that the petitioner somehow pressed, persuaded, and used illegal means, to keep the witness out of departmental enquiry, as there is no material on record in that regard. Then, it was maintained, that the respondents have admitted, that there was no token book introduced in this branch, and no duty list of the cashier cum clerk was also available in the branch, with the result, that if token book was not introduced, that was the fault of the Branch Manager, and for that, the petitioner cannot be held

liable, for not adhering to the system of issuing of token. Non issuance of token book was the fault of the Branch Manager, for which the petitioner cannot be held responsible. The Circular, Annexure-12, was again pressed into service, to contend, that it was the Branch Manager alone who was responsible for the lapse, whereas the petitioner has been scapegoat, which clearly makes out a case of discrimination as well. Then, some details were pleaded as to how the petitioner had not been shown the documents desired by him, and the submissions on the anvil of non issuance of Token Book were reiterated. Then, it was pleaded, that for the date fixed, being 7.6.1990, the petitioner was never informed of this particular date, which was obligatory on the part of the respondents, as per circular dt. 24.1.1989, and in case of absence of the party in the proceedings, on the preceding date, to send intimation to the charged official, and where the charged official does not turn up continuously, and if exparte proceedings are resorted to, it is obligatory on the part of the enquiry officer to send notice to charged official, which all had not been done, and therefore, the petitioner remained under bonafide belief, that the petitioner will receive information from enquiry officer about the date of hearing, but no information was received. Then, justification for absence on 7.6.1990, on the ground of

wife's ailment was pleaded, and it was contended, that his going to branch for farewell function, which was going on, does not mean that the petitioner had information about the enquiry proceedings, and the petitioner cannot be expected to be prepared for the same, and he could not be in a position to spare so much of time to attend the proceedings, when his wife was seriously ill, and that, his attending farewell was a matter of courtesy, which required his presence for short while, whereas the enquiry proceedings were to take full day, for which he was not available, nor prepared. It was also pleaded, that the petitioner had also proceeded on leave earlier on 7.6.1990, and on 6.6.1990 night his wife delivered a child, he again applied for leave for 8th and 9th, June 1990, which had been sanctioned. It was denied, that the petitioner tried to avoid attending the proceedings on one pretext or the other. Then, regarding absence on certain dates, as pleaded in the reply, rejoinder was given explaining dates. However, it was pleaded that on certain dates intimation was sent by the petitioner, or the Defence Assistant, to adjourn the dates, the date was fixed, and in such cases the adjournments, whichever were sought, were on the grounds which were beyond control of either the petitioner or the Defence Assistant.

Then, the petitioner also filed an application on 13.9.2001, praying for taking on record the two documents, being the decision of the criminal court, and that of the Appellate Court, as Annexure-15 and 16. Then, on 17.2.2003, the petitioner filed yet another application for taking on record the statements of certain witnesses recorded in the criminal proceedings, as Annexure-17 to 28, and vide orders dt. 15.10.2001, it was directed regarding first application that application shall be considered at the time of hearing. However, on 15.6.2003 the second application was allowed, and the documents Annexure 17 to 28 were taken on record.

In view of the fact that Annexure-17 to 28 have already been taken on record, I think it appropriate to accept the earlier application dt. 13.9.2001, and accordingly the same is allowed, and the documents Annexure-15 and 16, being the certified copy of the judgment of criminal court, and that of the Appellate Court, are also taken on record.

I have heard learned counsel for the parties at considerable length, to their heart’s content, rather for days together.

The main submission of the learned counsel for the petitioner was, that Naina Ram has not been examined in the enquiry; the petitioner has already been acquitted in the criminal case vide Annexure-16; the petitioner asked for certain documents, more particularly, as to what are his duties, but then they were not supplied, on 30.8.1989 only photo stat copies of the certain documents were shown, and not their originals, the enclosures of the preliminary enquiry were neither shown to the petitioner, nor supplied to the petitioner. Then, it was contended, that the petitioner was not informed about the date of hearing fixed being 7.6.1990, as the petitioner's wife delivered a child on 6.6.1990, and the petitioner was on leave from 7 to 10th June, 1990, still the enquiry was conducted exparte, and completed. Other submission made was, that the main fault was on the part of the Manager, but then, he was not at all proceeded against departmentally, rather he was produced as witness against the petitioner, and on his evidence the petitioner has been found guilty, which is bad. Reliance was placed on the judgment of Hon'ble the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., reported in AIR 1999 SC-1416, to contend, that even the already passed dismissal order is liable to be set aside where the delinquent has been acquitted in the criminal case. Then, the judgment of this Court in Himmat Singh Bhati Vs. State

of Rajasthan, reported in 2003(4) WLC(Raj.)-155, was relied to contend, that for the same delinquency if different punishments are to be imposed, then reasons have to be recorded, which has not been done in the present case. Then, judgment of Hon'ble the Supreme Court, in Kashinath Dikshita Vs. Union of India, reported in AIR 1986 SC-2118 was relied upon to contend, that on account of non supply of the documents to the petitioner, the enquiry is vitiated. It was reiterated, that it is admitted by the respondents, that no token book was introduced in that branch. Regarding the enquiry, proceeding exparte, reference was made to circular dt. 24.1.1989, however, the contents of that circular was not made known to the Court by either of the parties. It was also contended by the learned counsel for the petitioner, that the petitioner made specific request for keeping the departmental enquiry in abeyance, pending criminal case, but then that request was wrongly turned down, which has caused serious prejudice to the petitioner, as the petitioner has later on been acquitted by the criminal court.

On the other hand, learned counsel for the respondent submitted, that the charges in criminal case and the departmental enquiry are different, apart from the fact, that the scope and nature of the two proceedings is

entirely different, and therefore, even if the charges were identical, there is no legal impediment in continuing the two proceedings simultaneously. Relying upon the judgment of Hon'ble the Supreme Court, in C.M.D. UCO Bank Vs. P.C. Kakkar, reported in (2003) 4 SCC-364, specially paras 13, 14 and 15 it was contended, that acquittal by criminal court is not decisive in departmental enquiry, and the enquiry proceedings can go on simultaneously, and even after acquittal, enquiry proceedings need not be dropped. Likewise reliance was also placed on recent judgment of Hon'ble the Supreme Court, in Commissioner of Police, Delhi Vs. Narendra Singh, reported in 2006 AIRSCW-1958. Regarding the proceedings having not been stayed pending criminal prosecution, it was submitted, that it was rightly not stayed, as the scope of the enquiry in the two proceedings is entirely different, and reliance in this regard was placed on observations made by Hon'ble the Supreme Court, in Bharat Gold Mines's case, Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya reported in (1997) 2 SCC-699, and State of Rajasthan Vs. B.K. Meena reported in AIR 1997 SC-13. Then, it was also submitted, that the petitioner had admitted to have executed letter dt. 5.9.1984, and at a belated stage, the stand was taken about his having made the statement under duress, so much so, that in the reply submitted to the charge sheet, the

petitioner had not denied to have made admission on 5.9.1984, rather the only stand taken was, that the facts mentioned in the charge sheet in this regard are wrong. Regarding non production of Naina Ram, it was submitted, that even if it is not considered that the petitioner obstructed, or prevented him, from being produced in the Court, still in view of the admission of the petitioner, about having written document dt. 5.9.1984, it was not necessary for the Bank to examine Naina Ram, in order to prove either of the five charges. Regarding non supply of documents, it was contended, that all the documents, whichever were necessary and relevant for the enquiry, and on which the guilt has been founded, were either supplied to the petitioner, or he was allowed to inspect, and rather the petitioner had inspected all the documents. It was also pleaded, that the petitioner had been enlarging his request for supply of documents from time to time, only in order to prevent the enquiry from registering any material progress, still he was allowed to inspect all the documents whatever were relevant. It was also contended that at no stage the petitioner has shown or pleaded any fact, as to what prejudice has been suffered by the petitioner on account of his having not been shown any of the documents alleged by him, to have not been shown. In that regard reliance was placed on the judgment of Hon'ble the Supreme Court, in

Canara Bank Vs. V.K. Awasthy reported in (2005) 6 SCC-321, specially para-8. Then, regarding proceeding exparte, it was submitted, that the enquiry was going on practically day to day, and on 26.5.1990 the petitioner was granted indulgence, and the enquiry was adjourned to 28.5.1990, with a positive direction to appear on 28.5.1990. However, on 28.5.1990 the petitioner did not appear, and only his representative appeared, and informed about ailment of his wife, and accepting his request, the case was adjourned to 7.6.1990 at 10.45 A.M., and fixing the enquiry at Joyala, i.e. at the branch at which he was posted, and still he did not appear in the enquiry, in the morning incidentally he also was informed personally by the enquiry officer, and as a matter of fact, the petitioner did appear physically in the enquiry proceedings but did not participate, contending that he is on leave and has come only to attend the farewell of his colleague Mr. Suthar, and that he will participate in the enquiry only if his Defence Representative attends, and there is very likelihood of his not attending the enquiry. This shows that the petitioner was in touch with his Defence Representative, even for this date of hearing. It was also submitted, that the petitioner had applied for casual leave on 7th only, on 7th itself, and when on 7th the enquiry was adjourned to 8th, he intentionally got the leave extended for 8th and 9th also,

being Friday and Saturday. It was also pointed out, that on 7th it was never the case of the petitioner that he did not have the notice of the enquiry fixed on 7th, so as to be unable to participate in the proceedings, rather on that date his making the submission to the enquiry officer that he will participate in the enquiry only if his Defence Representative attends, and there is very likelihood of his not attending the enquiry, does show that the petitioner was in touch with his Defence Representative, even for this date of hearing and thus had the information of the date fixed. So far circular dt. 24.1.1989 is concerned, it was contended, that the petitioner had sufficient knowledge of the date, and he was being accommodated as and when needed, and the petitioner had absented despite notice of the date of hearing. This circular no where contemplates passing of the formal order of directing the enquiry to proceed exparte, and fixing another date thereafter for proceeding, and then giving intimation to the petitioner of such date, and dates after dates, and to proceed exparte only if the delinquent still persists to remain absent. Thus, the enquiry officer rightly proceeded exparte against the petitioner. It was also contended, that vide order dt. 8.6.1990, both the parties were directed to submit their written gist, but then admittedly the petitioner did not submit, any such gist despite having received the

information. It was also submitted that the Disciplinary Authority, and the Appellate Authority have considered the matter thread bare, and have passed a detailed speaking order. Then, much stress was laid on the scope of permissible interference by this Court, in such orders, and in that regard reliance was placed on the judgments of Hon'ble the Supreme Court in, Rai Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh, reported in JT 1997(3) SC-717, Sudhir Vishnu Panvalkar Vs. Bank of India, reported in JT 1997(5) SC-307, Allahabad Bank Vs. Deepak Kumar Bhola, reported in JT 1997(3) SC-539, Government of T.N. Vs. A. Rajapandian, reported in (1995) 1 SCC-216, and Lalit Popli Vs. Canara Bank & Ors., reported in (2003) 3 SCC-583.

In rejoinder it was submitted, that the respondents have not made available to the Court, the procedure laid down before enabling the enquiry officer to proceed exparte. Then, it was submitted, that earlier absence had been explained by the petitioner in rejoinder. Then, the judgment of Hon'ble the Supreme Court, in V.K. Awasthy's case was sought to be distinguished on facts, and some of the submissions made in the opening arguments were sought to be reiterated.

I have considered the submissions. During progress

of hearing, the learned counsel for the Bank was verbally directed to make available for perusal of the Court the entire record, regarding enquiry proceedings in question, which was made available on 15.5.2006, and that entire record, the entire proceedings, all documents, order-sheets available on record of enquiry proceedings, so also the two orders Annexures-8 and 11, have also been gone through by me, thread bare, rather to the extent of even forgetting all bounds of restriction, about the scope of interference by this Court in writ jurisdiction, simply to satisfy my conscious.

Broadly speaking the contentions of learned counsel for the petitioner can be summarized in the manner, firstly that since the petitioner has been acquitted in the criminal case, his punishment in departmental enquiry cannot stand. The other being that during pendency of the criminal case the enquiry proceedings should have been stayed. Third being that there has been violation of principles of natural justice. This submission comprehends various facets, like non supply of certain documents asked for by the petitioner, orders being non speaking, proceeding matter exparte, as the petitioner was on leave on 7.6.1990, and had no information about the date fixed etc., the impugned orders being non-speaking, and so on.

The next argument is that the evidence on record is not sufficient to prove the charges, inasmuch as the most important witness required to be examined was Naina Ram, who was not examined on behalf of the Bank, without which, the findings could not be recorded. The other submission is that the main responsibility was of the Manager, as it was his responsibility to identify the thumb marks from the marks available on record, and then to pass the document for payment which he failed to discharge, but then, instead of proceeded against him, he was produced as a witness against the petitioner, and as such the petitioner could not be found guilty.

In my view, none of these grounds hold good. Taking up the contention about impermissibility of punishment in departmental enquiry, after acquittal in the criminal case; so far Bharat Gold Mines Ltd.'s case is concerned, in that case the departmental enquiry was not set aside on the ground of the delinquent officer having been acquitted in criminal case, rather validity of the departmental proceedings were examined independently on its own merits, and in para-33 it was found, that the employee was not provided any subsistence allowance during the period of suspension, and the adjournment prayed for by him on account of his illness, duly supported by medical

certificates, was refused, resulting in the enquiry proceeding exparte. It was also found, that the officer has been punished “in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing”. Interalia with these findings the enquiry proceedings were found to be vitiated. Then, examining the question of permitting the department to hold the enquiry afresh, it was found, that since the delinquent had undergone agony for the last 14 years, and had been acquitted by the Criminal Court, the Department cannot be directed to institute a fresh enquiry against him on the same set of facts, and therefore, he was directed to be reinstated. Therefore, this judgment is of no assistance to the petitioner, as it does not lay down any absolute proposition of law, to the effect, that where the person concerned is acquitted in criminal case, he cannot be punished departmentally, or that, as the present case is, where he has been acquitted much after the punishment orders had become final up to Appellate Authority, still those punishment orders should be set aside on that count. On the other had, I find sufficient authority, in the judgments of Hon'ble the Supreme Court in P.C. Kakkar's case, and in Narendra Singh's case. In P.C. Kakkar's case the officer concerned was acquitted by the Criminal Court of the offences of embezzlement, and was punished

departmentally, and considering permissibility of proceeding departmentally, it was held in para-15 as under:-

> "Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in the criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application."

Then, Narendra Singh's case is still more telling, inasmuch as, in that case the delinquent was prosecuted for the offence under Section 308/34 I.P.C., and the two persons, who were accused therein made confession, stating that the respondent had committed theft of the said revolver and pistol. On the basis of their said confessional statement, he was arrested. While in police custody he also made confession regarding his involvement in the said offence, and identified the place wherefrom he committed the theft of two revolvers and one pistol, with some of his colleagues. In the criminal case in view of the fact, that apart from the confession of the accused there was no material on record, the respondent was discharged. However, in the meantime he was dismissed without holding any enquiry, and that dismissal was upheld in appeal, and on being challenged in Tribunal, it was set aside on the

ground, that the Department failed to establish sufficient grounds to dismiss, without holding disciplinary proceedings. That was challenged by way of writ petition by the Department, which writ was also dismissed. Thereupon regular disciplinary proceedings were initiated, and charge sheet was served, wherein the respondent was found guilty, and was punished with dismissal from service. In this enquiry the confession made to the police was relied upon. Appeal against that dismissal was dismissed. The Tribunal set aside the order of dismissal, holding that the confession made during the course of investigation does not relate to the recovery. The writ petition against this order was dismissed in limine, and when the matter was taken to the Hon'ble the Supreme Court, Hon'ble the Supreme Court held, that the standard of proof required in recording a finding of conviction in a criminal case, and in a departmental proceeding are distinct and different. In criminal case, it is essential to prove a charge beyond all reasonable doubt, while in a departmental proceeding preponderance of probability would serve the purpose. For this proposition the earlier judgment of Hon’ble the Supreme Court, in Kamaladevi Agarwal Vs. State of West Bengal, reported in (2002) 1 SCC-555, was relied upon. Then, in paras-13 and 14 it was held as under:-

"13. It is now well-settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would ot be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed.

14. In Manager, Reserve Bank of India, Bangalore Vs. S.Mani and others (2005) 5 SCC 100, this Court held:

"It is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employer....."

Then, examining the scope of Section 25 of the Evidence Act, in paras 26, 27 and 28 it was held as under:-

26. It is now well-settled that the provisions of the Evidence Act are not applicable in a departmental proceeding.

27. In State of Andhra Pradesh and others vs. Chitra Venkata Rao [(1975) 2 SCC 557], this Court held:

"The High Court was not correct in holding that the domestic enquiry before the Tribunal was the same as prosecution in a criminal case."

28. It was further held:

"The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. vs. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against

> a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole Judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

And then holding that Section 25 and Section 26 of the Evidence Act are not attracted, the confession was found to be admissible in the departmental proceedings, the orders of the Tribunal, and High Court were set aside. Thus, this contention cannot be accepted, that since the petitioner has been acquitted he could not be punished departmentally.

Taking up the contention about the proceedings in

departmental enquiry requiring to be stayed during pendency of the criminal case, this submission also, in my view, does not hold good. In this regard sufficient guidance is available from the judgments of Hon'ble the Supreme Court, in B.K. Meena's case and Mohd. Yousuf Miya's case. In Mohd. Yousuf Miya's case it has been held as under:-

> "The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law."

In B.K. Meena's case also the aspect of requirement of stay of criminal proceeding was considered, and it was held, that the disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. Likewise in South Bengal State Transport

Corpn.Vs. Swapan Kumar Mitra, reported in JT 2006(2) SC-307, the Hon'ble Supreme Court has taken the same view. In that view of the matter, I do not find any error on the part of the enquiry officer, in not keeping the departmental proceedings in abeyance, pending criminal case.

Then, taking up the contention, about the validity of proceedings, having been taken exparte, against the petitioner on 7.6.1990; In that regard it would suffice to say, that the enquiry was going on since number of years, and the petitioner had information about each and every date of hearing. It is a different story, that on some dates he was appearing, and on some dates he did not appear, but then it is never the grievance of the petitioner, before 7.6.1990, that he did not have the information about any date of hearing. In these circumstances, when on 26.5.1990 the enquiry was got adjourned to 28.5.1990, by which time the enquiry was going on, day to day, if the petitioner did not appear on 28.5.1990, and his Defence Representative was present, that was sufficient notice of hearing to him of 7.6.1990. Significantly it is not in dispute, that on 7.6.1990 he did physically appear in the enquiry proceedings, but then he not only gave out to have come only to attend the farewell, rather he took the positive stand, that he will participate

in the enquiry, only if his Defence Representative attends, and there is very likelihood of his not attending the enquiry. This shows that the petitioner was in touch with his Defence Representative, even for this date of hearing, and was also in know that his Defence Representative will not appear on that date. It is also significant to note that in the entire writ the petitioner has nowhere assailed the correctness of the above recital in the proceedings of 7.6.1990. Obviously it was not the version that his Defence Assistant did not inform him about the date of hearing. Not only that, in any case, on 7.6.1990 when the enquiry was adjourned to 8.6.1990, by then, he had not applied for leave of 8th and 9th June, 1990, and therefore, nothing had prevented him from appearing on 8.6.1990, and in any case, from requesting the enquiry officer on 7.6.1990, to adjourn the hearing on some next convenient date. It appears, that the petitioner simply did not want to cooperate with the enquiry, as departmental evidence had already been over, and the petitioner had not given any list of witness to be examined on the side of the defense, nor did he give list of documents. Over and above, all this, admittedly after completion of the enquiry on 8.6.1990, the enquiry officer had directed the parties to submit their written gist, which information was admittedly received by the petitioner, but no such gist was ever submitted. Admittedly

on 7.6.1990, at least in the morning he was informed by the enquiry officer himself, that they are going to Joyala for holding enquiry in the petitioner's matter, therefore, if the petitioner had any bonafide, he could straightway appear on 7.6.1990, and point out the circumstances, as to how, either he does not have the notice, or as to how he is not in a position to participate in the enquiry, and could have asked to adjourn the enquiry. In these circumstances, I do not find any error on the part of the enquiry officer, in proceeding exparte.

So far as the circular dt. 24.1.1989 is concerned, firstly it has not been made available for perusal of the Court by either of the parties, and in any case, the petitioner also, even without circular, has not shown, as to what were the requirements of that circular, which have not been complied with in the present case, so as to vitiate the proceedings of enquiry exparte. In my view, in the totality of circumstances, I do not find any error in proceeding the enquiry exparte on 7.6.1990. There is yet another aspect of the matter requiring to be considered, being that the petitioner, at best, claims to be on leave, which had been sanctioned, and therefore he was under no obligation to appear in the enquiry, on the date, on which he was on leave. As an abstract legal proposition, I am not

inclined to subscribe to this view. That apart, the learned counsel for the petitioner, during course of the hearing, which continued for some days, was clearly directed to show some legal basis for this proposition, but he categorically expressed his inability. In my view if this proposition were to be accepted, it would make it impossible for any departmental enquiry to be completed, as the delinquent officer may have available to his credit, any amount of different types of leaves, which he may choose to avail, and thus forestall the enquiry indefinitely. This cannot be permitted. Therefore it cannot be said that the enquiry officer was in error in proceeding with the enquiry exparte, as the petitioner was on leave, on that day.

Then, taking up the contention about violation of principles of natural justice; including all its various facets. So far as non supply of documents is concerned, a perusal of the entire enquiry proceedings does show, that the petitioner, as a matter of fact, was more interested in obstructing the enquiry, and prolonging it, instead of seriously being interested in getting the document. I find certain order sheets in the enquiry proceedings, where the petitioner even went on demanding the copy of the Rules laying down procedure for departmental enquiry, and when Rules were made available, he went on to the extent of

raising an objection, that the copy supplied to him is not in accordance with Rashtriya Rajbhasha Adhiniyam, and in that process the matter went on being adjourned. Likewise, I also found, that when the petitioner was shown the photo stat copy of certain documents, he wanted to see originals, which were lying in the Court, where the challan had been filed, and when petitioner was permitted to inspect those documents in the Court, the petitioner made it a point, that he cannot be directed to inspect, rather the Bank should be directed to make arrangement to allow the petitioner to inspect the document, and then, he proceeded to clarify the thing in the manner, that application for inspection of documents in the Court is required to be made by the Bank, and not by the petitioner, and thereupon the petitioner can inspect the documents. Even these requests of the petitioner were acceded to, and on 15.2.1990 all the documents had been inspected by the petitioner, and on that day, the defense side categorically gave out, that he does not want to inspect any more documents. Then, on the next date being 13.3.1990, it was understood, that all the documents have been inspected by the petitioner, and the petitioner gave out that he is not able to produce list of witness, and documents today, as his Defence Representative could not come, and wanted adjournment, with assurance, that in the meantime he would produce the list, whereupon

the case was adjourned to 23.3.1990. Then, it was taken up on 20.4.1990. Then on the adjourned date, the evidence was recorded, and thereafter no grievance had been made by the petitioner, about his having not been supplied any more documents. In that view of the matter, it cannot be said, that the grievance of the petitioner about his having not been supplied any of the documents survived.

So far as the documents being enclosures of preliminary enquiry is concerned, in view of the above facts, this grievance also no more survives, and in any case, the enclosures of the preliminary enquiry report, or the preliminary enquiry report, have not been relied upon against the petitioner, for finding the petitioner guilty. Over and above all this, whether in the submissions made in response to the show cause notice after receipt of the enquiry report, or in the memo of appeal, or in the present writ petition, nothing has been alleged, or shown on the side of the petitioner, as to what prejudice was suffered by the petitioner, on account of non-supply of any of the documents, or on account of any other alleged violation of principles of natural justice.

Law in that regard to the requirement of compliance with the principles of natural justice, and the

consequence of violation thereof, can no more be said to be res integra.

In this regard I may refer to the judgment of Hon'ble the Supreme Court in V.K. Awasthy's case. That is a case of bank employee itself, wherein Hon’ble the Supreme Court did consider its previous judgments, and interfering with the judgment of High Court, which had set aside the punishment of dismissal, Hon’ble the Supreme Court restored the order of punishment, holding, that the decision of the learned Single Judge, on the question of quantum of punishment, and the Division Bench, regarding alleged violation of principles of natural justice, cannot be maintained. In this case various aspects of the compliance of natural justice have been considered. In para 5 and 6 it has been noticed, that in that case, undisputedly, the employee did not raise any ground, regarding violation of principles of natural justice, either in the memorandum of appeal, or at the time of personal hearing of the employee before the appellate authority, and admittedly, there was no material placed by the employee, to show, as to how he has been prejudiced. Then, the observations of Hon’ble the Supreme Court in Managing Director, ECIL Vs. B. Karunakar, reported in (1993) 4 SCC-727 were reproduced, and it was held, that in the appeal before the Appellate Authority,

findings of the enquiry officer, and disciplinary authority, were challenged and, therefore, the question of any prejudice does not arise, and since the employee had the opportunity to meet the stand of the Bank, it was to his advantage, and opportunity for personal hearing was also granted, and thus there was no question of violation of principles of natural justice. Then a question was posed, to be adjudicated, as to whether principles of natural justice have been violated, and if so, to what extent any prejudice has been caused. Then, in para-8 to 13, the concept of principles of natural justice has been recapitulated. Then, in para-14, it has been noticed, that the concept of natural justice has undergone a great deal of change in the recent years, viz. what particular rule of natural justice should be implied, and what its context should be, in a given case, must depend, to a great extent, on the fact and circumstances of that case, the framework of the statute, under which the enquiry is held, and that the old distinction, between a judicial act, and an administrative act, has withered away. Then, in para-15 the few instances from various judgments, where the principles of natural justice have been defined, as “universal justice”, “the requirements of substantial justice”, “the natural sense of what is right and wrong”, “fundamental justice”, “fair play in action”, “a duty to act fairly”, “a

fair crack of the whip" etc. have been recapitulated. Then, in para-16 to 20 it has been held as under:-

> "16. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in cause sua" or "nemo debet esse judex in propria causa sua" as stated in (1605) 12 Co. Rep. 114 that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa, quia non potest esse judex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram Partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur at altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram Partem rule, namely "qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud aequum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" (see Bosewell case) or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.
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> 17. What is known as "useless formality theory" has received consideration of this Court in M.C.Mehta v. Union of India, (1999) 6 SCC-237. It was observed as

under: (SCC pp.245-47, paras 22-23)

> "22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice, do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corporation 1971(1) WLR 1578, (per Lord Reid and Lord Wilberforce), Glynn v. Keele University 1971(1) WLR 87, Cinnamond v. British Airport Authority 1980(1) WLR 582 and other cases where such a view has been held. The latest addition to this view is R v. Ealing Magistrates' court exp. Fannaran (1996) 8 Admn.L.R.351(358) (See DeSmith Suppl.p.89)(1998) where Straughton L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in Lloyd v. McMohan 1987(2) WLR 821(862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant 1959 NZLR 1014, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood- not certainty – of prejudice'. On the other hand, Garner Administrative Law (8th Edition 1996, PP 271-272) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin Megarry J. in John. V. Rees 1969(2) WLR 1294 stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the Court but for the authority to consider. Ackner, J. has said that the "useless formality theory" is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that "convenience and justice are often not on speaking terms". More recently Lord Bingham has deprecated the 'useless formality' theory in R v. Chief Constable of the Thames Valley Police Forces exp. Cotton 1990 IRLR 344 by giving six reasons. (see also his article

'Should Public Law Remedies be Discretionary? 1991 PL 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in "Natural Justice, Substance or Shadow' by Prof. D.H.Clark of Canada (see 1975 PL pp.27-63) contending that Malloch and Glynn were wrongly decided. Foulkes (Administrative Law, 8th Ed. 1996, P.323), Craig (Administrative Law 3rd Ed.P.596) and others say that the Court cannot prejudge what is to be decided by the decision making authority. DeSmith(5th Ed. 1994 paras 10.031 to 10.036) says Courts have not yet committed themselves to any one view though discretion is always with the Court. Wade (Administrative Law 5th Ed. 1994, PP. 526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma (JT 1996(3) S.C. 772), Rajendra Singh v. State of M.P.(JT 1996(7) S.C. 216) that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it can not be waived."

23. We do not propose to express any opinion on the correctness, or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J."

(emphasis in original)

> 18. As was observed by this Court we need not to go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellant, unless failure of justice is occasioned or that it would not be in public interest to do so in a particular case, this Court may refuse to grant relief to the employee concerned. (See godde Venkateswara Rao vs. Govt. of A.P. AIR 1966 SC-828) It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu Vs. Union of India AIR 1990 SC-1489).
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> 19. The aforesaid position in law was again reiterated in Canara Bank Vs. Debasis Das (2003 SCC(L&S)-507).
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> 20. Inevitably, the conclusion arrived at by the Division Bench that there was violation of principles of natural justice cannot be maintained."

I may in this regard also observe, that I have already considered this legal aspect, including the above judgment, apart from various other judgments of Hon'ble the Supreme Court, on this point, in the matter of R.S. Udawat Vs. State Bank of India & Ors., being S.B. Civil Writ No.3486/1993 decided on 12.01.2006, and have respectfully followed them.

In view of the above established legal position, in the background of the factual aspect, as emerging from

the perusal of the entire disciplinary proceedings, in my view, it cannot be said, that there has been any violation of principles of natural justice, and in any case the petitioner has not shown to have suffered any prejudice on that count, so as to vitiate the enquiry proceedings.

Then, so far non production of Naina Ram is concerned, may be that according to the petitioner Naina Ram was an important witness requiring to be examined, and may be that the respondents might be feeling, that it is the petitioner who has prevented him from being examined in departmental enquiry, but then I am not inclined to go into either of these aspects, inasmuch as, there is no material available on record to show, that it is the petitioner who prevented Naina Ram from being examined in the departmental enquiry, and so far importance of production of Naina Ram is concerned, in the ultimate analysis, it comes to, as to whether the evidence on record, as produced by the department, in the enquiry is sufficient, or did require some more evidence, or some more significant evidence of different nature. But then, in the ultimate analysis, since it rests in the realm of sufficiency of evidence, it is not open to me to go into this question in my writ jurisdiction as to whether the evidence produced on record is sufficient to find the charges proved, or that some more evidence was

required to be taken, may be that of Naina Ram, or of any body else. In view of the principles propounded by Hon'ble the Supreme Court, in various cases cited by the learned counsel for the respondent, about the permissible scope of interference in my writ jurisdiction, all that is required to be seen is, as to whether there is some evidence, relevant and admissible, to establish charges against the petitioner. If considered on this parameter, I do not find it possible to conclude, that from the evidence on record charges are not proved. There is enough material on record. It is yet another aspect of the matter, that for the sake of argument, even if it were to be assumed, that the evidence on record does not establish all the charges, and establishes only some of the charges, even then, the punishment is not required to be interfered with, in view of the judgments of Hon'ble the Supreme Court in State of Orissa Vs. Bidyabhushan, reported in AIR 1963 SC-779, Railway Board, New Delhi Vs. Niranjan Singh reported in AIR 1969 SC-966, and Union of India Vs. Parma Nanda reported in AIR 1989 SC-1185. In the present case as noticed above, the petitioner had given statement on 5.9.1984, wherein he had clearly admitted, that it was the petitioner who had verified the thumb mark of Naina Ram on the basis of his own knowledge, and that it is possible on account of carelessness, that he might have made payment to some

unknown person, and undertook to reimburse the amount. The factum of giving this statement in writing has not been denied, either in the reply or any where else, and at the belated stage, a stand had been taken, only to the effect, that it was made under duress, but then, the person before whom it was made, had appeared in the witness box, and it was not suggested to him, that it was made under duress. In that view of the matter, this document clearly establishes charge no.5, and the other evidence on record clearly establishes the other charges. Therefore, in my view, even on the ground of non production of Naina Ram, the orders are not required to be interfered with.

So far as the responsibility being that of Manager is concerned, and the judgment relied upon by the petitioner in Himmat Singh's case, in this regard, is of no avail to the petitioner, inasmuch as in that case two persons were being proceeded against in the departmental enquiry, and for identical delinquencies different punishments were awarded, whereupon it was observed by this Court, that reasons are required to be recorded for awarding different punishments. In the present case when the guilt of the petitioner is established, even from his admission made on 5.9.1984, it does not lie in the mouth of the petitioner to contend, that the petitioner could not be

proceeded against, unless the Manager is proceeded against and is punished. To repeat, no authority to support this proposition was shown by the learned counsel for the petitioner.

So far as the orders being non speaking is concerned, in my view, a bare perusal of the orders does show, that they are sufficiently speaking, apart from the fact, that it is not shown by the petitioner, as to what prejudice has been suffered by him, on account of the orders being allegedly non speaking.

Thus, considering from any stand point, I do not find the orders Annexure-8 and 11 to be suffering from any error requiring any interference by this Court.

The writ petition is, therefore, dismissed. The parties are directed to bear their own costs of this writ.

(N P GUPTA),J.

/Sushil/